

**THE OFFICE OF REGULATORY STAFF**  
**SURREBUTTAL REHEARING TESTIMONY**  
**OF**  
**BILL STANGLER**  
**AUGUST 29, 2018**



**DOCKET NO. 2017-292-WS**  
**Application of Carolina Water Service, Incorporated for**  
**Approval of an Increase in Its Rates for Water and Sewer**  
**Services**

**SURREBUTTAL REHEARING TESTIMONY**

**BILL STANGLER**

**ON BEHALF OF**

**THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF**

**DOCKET NO. 2017-292-WS**

**IN RE: APPLICATION OF CAROLINA WATER SERVICE,**

**INCORPORATED FOR APPROVAL OF AN INCREASE IN ITS RATES FOR**

**WATER AND SEWER SERVICES**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

**A.** My name is Bill Stangler. My office is at 1001 Washington Street in Columbia, South Carolina. I am your Congaree Riverkeeper.

**Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

**A.** I have a bachelor's degree in Geography from the University of South Carolina. For the last almost 7 years my full-time job has been as Congaree Riverkeeper - running the non-profit organization and advocating for our local rivers.

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA ("COMMISSION")?**

**A.** No.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS REHEARING PROCEEDING?**

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**CONGAREE RIVERKEEPER  
1001 Washington Street  
Columbia, SC 29201**

**A.** The purpose of my testimony is to respond to testimony given by witnesses for Carolina Water Service concerning the federal lawsuit of *Congaree Riverkeeper, Inc. vs. Carolina Water Service, Inc.* (Civil Action Number 3:15-cv-00194-MBS).

**Q. HAVE YOU REVIEWED THE PREFILED TESTIMONIES OF CWS' WITNESSES?**

**A.** Yes

**Q. WHY DID CRK FILE THE LAWSUIT AGAINST CWS?**

**A.** Our citizen Clean Water Act lawsuit against CWS was brought in an effort to bring the I-20 facility into compliance with their federal Clean Water Act permit. This permit had unambiguously required that the I-20 Plant be connected to a regional wastewater treatment system *and* cease discharging into the Lower Saluda River – a state scenic river – since 1999. A decade and a half later, CWS's discharges from the I-20 Plant continued into waters where the public recreates. There were also numerous effluent limitation violations at the I-20 Plant. Congaree Riverkeeper's litigation sought to address both of these issues.

**Q. DOES CRK REGULARLY BRING LAWSUITS AGAINST OTHER GROUPS THAT IMPROPERLY DISCHARGE INTO THE STATE'S WATERWAYS?**

**A.** Congaree Riverkeeper's mission is to protect and improve water quality, wildlife habitat, and recreation on the Congaree, Lower Saluda, and Lower Broad Rivers through advocacy, education, and enforcement of environmental laws. We monitor all sorts of sites in our watershed and take enforcement action when necessary. While this is the first federal CWA lawsuit that Congaree Riverkeeper ever filed, we have sent notices of our intent to

do so at other sites and have resolved violations at others without the need for litigation. We would file other litigation for violations of the federal CWA if necessary – in other words, we did not specifically target CWS as a company. We focused on CWS because they were clearly violating terms of their Clean Water Act permit, and it was having real impacts on the River. We would consider litigation against any other company doing the same thing.

**Q. WOULD CRK HAVE BROUGHT THE LAWSUIT AGAINST CWS HAD THE COMPANY NOT HAD MULTIPLE EFFLUENT DISCHARGE VIOLATIONS?**

**A.** CWS's regular pattern of ongoing effluent violations was one of the things that brought this facility to our attention and was a key factor in the decision to file the lawsuit.

**Q. WERE CWS'S EFFLUENT DISCHARGE EXCEEDANCES ONLY A SECONDARY COMPONENT OF THE CRK LAWSUIT?**

**A.** No. We brought two specific claims in our lawsuit, that CWS had routinely violated the terms of their NPDES permit with effluent violations, and that they had violated their permit by failing to connect to the regional sewer system.

**Q. IN YOUR OPINION, WAS THE COMPANY'S ONLY LIABILITY THAT WHICH AROSE FROM THEIR INABILITY TO INTERCONNECT WITH TOWN OF LEXINGTON?**

**A.** No. CWS was also liable for numerous effluent violations, including repeated exceedances for fecal coliform bacteria and biochemical oxygen demand (BOD5). The Court's ruling demonstrates this point as the Court found that CWS had violated the

1 effluent limitations contained in its Clean Water Act permit 23 times - a ruling that the  
2 Court refused to reconsider at CWS's request.

3 **Q. DID CRK BRING SUIT IN AN EFFORT TO HAVE CWS TERMINATE SEWER**  
4 **SERVICE TO THEIR MORE THAN 2,000 CUSTOMERS?**

5 **A.** No. We never asked for a termination of CWS's sewer service to customers in the  
6 litigation, and in fact, when ruling in our favor, the Court gave CWS a year to reach a  
7 resolution in an effort to avoid this sort of termination.

8 **Q. DID CWS VIOLATE ITS NPDES PERMIT REQUIREMENTS BY**  
9 **DISCHARGING UNTREATED WASTE INTO THE RIVER?**

10 **A.** Yes, CWS violated the limits of their NPDES permit. I would say they discharged  
11 undertreated waste because the effluent did not meet the limits of their permit.

12 **Q. DID CWS'S DIFFICULTIES IN NEGOTIATING AN INTERCONNECTION OR**  
13 **SALE OF ITS SYSTEM TO THE TOWN OF LEXINGTON ALLOW CWS TO**  
14 **VIOLATE ITS NPDES PERMIT?**

15 **A.** No. The Clean Water Act is a strict liability statute. All the plaintiff need do is  
16 establish that the defendant violated the terms of its NPDES permit. Good faith efforts to  
17 comply, or alleged impossibility, is not a valid defense to liability. Under the Clean Water  
18 Act the party must either achieve the discharge levels it has been allowed, or pay the  
19 consequences of its discharge, or stop discharging.

20 **Q. TELL ME ABOUT THE COURT'S RULING IN THE FEDERAL COURT**  
21 **ACTION.**

1     **A.**             In March of 2017, the federal court held that CWS violated its Clean Water Act  
2             permit by failing to connect to the regional system for over 15 years and by violating  
3             multiple effluent limits contained in its permit repeatedly. The court imposed a \$1.5  
4             million penalty against CWS for its violation of the connection requirement and a \$23,000  
5             fine against CWS for its violation of the effluent limits.

6     **Q.     DID THE COURT GRANT CWS RECONSIDERATION AFTER THIS RULING?**

7     **A.**             CWS filed multiple motions after the Court's Order, as was its practice throughout  
8             this litigation (motions which CWS repeatedly lost after extensive time was spent litigating  
9             them by both sides). One of CWS's motions sought reconsideration of the Court's ruling  
10            on liability and penalties; another sought to dismiss the case as "moot" even after the Court  
11            had ruled. Congaree Riverkeeper spent huge amounts of time dealing with all of CWS's  
12            motions in this litigation, which unquestionably made the attorneys' fees for both sides  
13            much higher than necessary.

14            Regarding reconsideration, the Court largely denied CWS's request for  
15            reconsideration, finding that there was no basis to change its conclusion that CWS had  
16            violated the CWA for failing to connect to the regional facility and by exceeding the  
17            effluent limitations. The court merely granted reconsideration on the \$1.5 million penalty  
18            issue because the parties had agreed that they would present evidence on an appropriate  
19            penalty if CWS was found liable, and the parties had not had a chance to present such  
20            evidence at the time of the Court's ruling. It is important to note that this penalty  
21            proceeding is still ongoing – the parties are now allowed to conduct discovery on penalties

1 and argue what penalty is appropriate by October 8, 2018. The Court could easily impose  
2 a \$1.5 million penalty – or a higher penalty – again, after considering this evidence.

3 **Q. WAS THE FINE IMPOSED ON CWS RELATED TO THE IMPROPER**  
4 **DISCHARGES AND EFFLUENT VIOLATIONS VACATED?**

5 **A.** No. The Court explicitly refused to vacate the \$23,000 penalty for the effluent  
6 limitation violations. And again, the penalty for violation of the connection requirement  
7 was not “vacated” to never be reinstated – the Court will be deciding what this penalty  
8 should be after briefs are filed in early October. The penalty could be less than the \$1.5  
9 million originally assessed, the same amount, or more – it just depends on how the Court  
10 weighs the evidence.

11 **Q. COULD CWS HAVE AVOIDED COSTLY LITIGATION WITH CRK HAD THEY**  
12 **NOT VIOLATED THEIR NPDES PERMIT AND HAD NOT DISCHARGED**  
13 **POORLY TREATED WASTE INTO THE RIVER?**

14 **A.** Yes, of course – it was a pattern of ongoing effluent violations that we noticed, and  
15 then the failure to connect and eliminate these discharges in 1999 as required by the Permit.  
16 CWS says that it did not have the ability to resolve the connection issue, but we disagree  
17 and the federal court disagreed. The federal court explained that “the onus” was on CWS  
18 to connect, regardless of whether CWS could achieve the sort of connection (a bulk  
19 treatment agreement where CWS retained ownership and profits from the system) that it  
20 wanted. *See Congaree Riverkeeper v. CWS*, March 30, 2017 Order at 26. The Court also  
21 found that “there are numerous ways to connect to the facility. The Court finds ‘connect’

1 does not mean on Defendant's terms, nor does it infer that Defendant will have a continuing  
2 role after connection is made." *Id.*

3 And CWS certainly had the power to stop the effluent limitation violations that we  
4 sued over, but they did not.

5 **Q. DID CWS UNDERTAKE YEARS OF EFFORTS TO COMPLY WITH ITS**  
6 **PERMIT AND WAS IT PREVENTED FROM COMPLYING WITH THE**  
7 **CONNECTION REQUIREMENT?**

8 **A.** That assertion by CWS is misleading. This case has a very long history, but as the  
9 federal court found, "in 1998, Defendant initially attempted to comply with the permit;  
10 however, Defendant failed to undertake any attempt to comply with the permit between  
11 2002 and 2014." *Id.* at 28. The long and short of it is that CWS attempted to connect on  
12 terms that were favorable to CWS, but this does not comport with the strict liability nature  
13 of the CWA. As noted above, the effluent limitation violations were separate violations  
14 that CWS failed to remedy.

15 Moreover, as is required by the CWA, Congaree Riverkeeper provided CWS with  
16 60-days' notice of its intent to sue over this facility on November 4, 2013 and did not file  
17 this case for over a year, until January 14, 2015. CWS had time during this period to try  
18 and resolve the situation, but no resolution was reached. The idea that litigation was  
19 impossible to avoid is simply wrong.

20 **Q. WHAT ARE THE PURPOSES OF A CWA CITIZEN SUIT?**

21 **A.** As the Fourth Circuit has recognized, the "citizen suit provision is 'critical' to the  
22 enforcement of the CWA" since it "allows citizens 'to abate pollution when the government

1 cannot or will not command compliance.” *The Piney Run Pres. Ass’n v. The Cnty.*  
2 *Comm’rs of Carroll Cnty., MD*, 523 F.3d 453, 456 (4th Cir. 2008) (quoting *Friends of the*  
3 *Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 152 (4th Cir. 2000);  
4 *Gwaltney*, 484 U.S. at 62). The citizen suit plays a key role in ensuring that dischargers  
5 do not have a license to pollute indefinitely in cases where the government agencies do not  
6 stop such pollution.

7 That is exactly what happened here – DHEC had not been able to force CWS to  
8 comply with the Clean Water Act, and Congaree Riverkeeper stepped in to do so.

9 **Q. WHAT WOULD BE THE EFFECT OF THE PSC ALLOWING CWS TO**  
10 **RECOVER FEES FOR DEFENDING SUCH A CITIZEN SUIT?**

11 **A.** The Clean Water Act citizen suit is designed to result in penalties which have a  
12 deterrent effect on current and would-be polluters. The federal court found that such  
13 penalties are appropriate here (and again, is still considering what penalty would be  
14 appropriate for violations of the connection requirement). If the PSC allows CWS to pass  
15 its attorneys’ fees on to consumers, then this mitigates the deterrent effect that Congress  
16 intended with the citizen suit provision. Why would a utility ever voluntarily come into  
17 compliance if it could choose instead to refuse to comply, litigate for years, and then  
18 recover the costs of litigation from consumers if it did not prevail? This is not how the  
19 CWA was designed and should not be the result here.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A.** Yes.